

1 SENATE JOINT MEMORIAL 29

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Eric G. Griego

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10 A JOINT MEMORIAL

11 REQUESTING FEDERAL PROTECTION OF NATIVE AMERICAN SACRED SITES.

12
13 WHEREAS, the state of New Mexico recognizes and respects
14 the sovereign authority of federally recognized Native American
15 nations, tribes and pueblos, which recognition is expressly
16 stated in Executive Order 2005-003, entitled "Adoption of
17 Statewide Tribal Consultation Policy on the Protection of
18 Sacred Places and Repatriation" and dated February 1, 2005; and

19 WHEREAS, the Cultural Properties Protection Act seeks to
20 ensure that cultural property under the jurisdiction of the
21 state is identified and is not inadvertently damaged or
22 destroyed and that cultural property belonging to the state is
23 preserved and protected; and

24 WHEREAS, Native American nations, tribes and pueblos
25 within the state of New Mexico are actively concerned and

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1 involved with the protection of Native American sacred places;
2 and

3 WHEREAS, Native American cultural and religious values,
4 beliefs and practices are intimately and spiritually linked to
5 the land and the natural world; and

6 WHEREAS, past federal policies and actions have resulted
7 in the desecration, damage and destruction of Native American
8 sacred places and sites, many of which remain threatened and
9 endangered today; and

10 WHEREAS, congress enacted the American Indian Religious
11 Freedom Act expressly "to protect and preserve for American
12 Indians their inherent right of freedom to believe, express,
13 and exercise the traditional religions of the American Indian
14 ... including but not limited to access to sites, use and
15 possession of sacred objects, and the freedom to worship
16 through ceremonials and traditional rights"; and

17 WHEREAS, in *Lyng v. Northwest Indian Cemetery Protective*
18 *Association*, 485 U.S. 439 (1988), the United States Supreme
19 Court effectively vitiated the American Indian Religious
20 Freedom Act as an enforceable law to protect Native American
21 sacred sites by shutting the door on free exercise challenges,
22 pursuant to the first amendment to the United States
23 constitution, to governmental projects desecrating, interfering
24 with and even destroying such landscapes and sites; and

25 WHEREAS, other federal laws and programs, such as

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1 President Clinton's Executive Order 13007, entitled "Indian
2 Sacred Sites", do not specifically focus on the protection of
3 sacred landscapes and do not confer any specific judicially
4 enforceable cause of action to protect Native American sacred
5 sites and places;

6 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
7 STATE OF NEW MEXICO that President Barack Obama be requested to
8 commence immediate steps to address longstanding Native
9 American sacred-site issues on a national basis, including
10 establishing a specific and enforceable cause-of-action
11 provision within the American Indian Religious Freedom Act of
12 1978 and providing equitable funding to support Native American
13 sacred-site resource protection programs; and

14 BE IT FURTHER RESOLVED that any federal legislation or
15 other initiative regarding Native American sacred-site
16 protection must include meaningful consultation and
17 collaboration with tribal officials, participation by
18 appropriate organizations and groups and the utmost respect for
19 the confidential nature of sacred-site information; and

20 BE IT FURTHER RESOLVED that copies of this memorial be
21 transmitted to the president of the United States; the
22 secretary of the interior; the assistant secretary of the
23 interior for Indian affairs; the president of the Navajo
24 Nation; the speaker of the Navajo Nation council; the president
25 of the Mescalero Apache Tribe; the president of the Jicarilla

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1 Apache Nation; the chair of the Ute Mountain Ute Tribe; the
2 governors of the nineteen Indian pueblos in New Mexico; the
3 members of the New Mexico congressional delegation; the
4 governor; the secretary of Indian affairs; the chair of the
5 national congress of American Indians; and the chair of the all
6 Indian pueblo council.

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